

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

CLUB ST. CROIX HOMEOWNERS )  
ASSOCIATION, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SHELL OIL COMPANY, d/b/a SHELL )  
CHEMICAL CO., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil No. 2003-181

**ATTORNEYS:**

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*For the Defendant.*

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*For the Defendant.*

**MEMORANDUM OPINION AND ORDER**

**GÓMEZ, C.J.**

Before the Court is the motion of the plaintiff, Club St. Croix Homeowners Association, Inc. ("Club St. Croix"), for reconsideration of this Court's order granting the motion of the defendant, Shell Oil Company, d/b/a Shell Chemical Co. ("Shell"), to dismiss this action for lack of personal jurisdiction.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Club St. Croix owns, operates and manages certain real property known as Club St. Croix, located on St. Croix, U.S. Virgin Islands. Shell is a corporation organized under Delaware law and has its principal place of business in Texas. Shell manufactured a plastic resin called polybutylene ("PB"), which it sold to pipe manufacturers and others involved in the building and plumbing businesses. The pipe manufacturers in turn made plumbing systems by combining PB with acetal, another plastic resin. Club St. Croix brought this seven-count action, alleging that Shell had engaged in a conspiracy with other entities in the plumbing and building industries to market and sell PB despite knowing that PB plumbing systems were defectively designed. Club St. Croix alleged that it sustained property damages from those allegedly defective systems.

Shell moved to dismiss this action pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. The Court granted the motion.<sup>1</sup> Club St. Croix now seeks reconsideration of that ruling.

## **II. DISCUSSION**

Motions for reconsideration are governed by Local Rule of Civil Procedure 7.4, which provides:

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<sup>1</sup> (See Mem. Op. and Order, Nov. 11, 2007.)

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the court. . . . A motion to reconsider shall be based on: (1) intervening change in controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice.

LRCi 7.4 (2000). The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Such motions are not substitutes for appeals, and are not to be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT&T of the V.I.*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004). As the *Bostic* court noted, ". . . Local Rule 7.4 affirms the common understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal." *Id.*

### III. ANALYSIS

To the extent Club St. Croix argues that this Court's ruling should be vacated "in the interest of justice," it appears that Club St. Croix seeks to meet its burden by arguing that the Court's ruling should be revisited due to the need to correct clear error or prevent manifest injustice. Specifically, Club

St. Croix argues that "the Court overlooked and should have granted plaintiff's request that it allow jurisdictional discovery to go forward before deciding defendant's Motion to Dismiss." (Pl.'s Mot. for Recons. or in the Alternative for Transfer 1.) In support of that argument, Club St. Croix contends that the Court failed to address Club St. Croix's request for jurisdictional discovery, "notwithstanding the fact that it based its decision on the lack of evidence presented by plaintiff to support jurisdiction . . . ." (*Id.* at 3.) Club St. Croix thus asserts that the order granting Shell's motion to dismiss should be vacated so that Club St. Croix might obtain additional discovery of Shell's business in the Virgin Islands.

In the Third Circuit, the rule "is generally that jurisdictional discovery should be allowed unless the plaintiff's claim is 'clearly frivolous.'" *Massachusetts School of Law at Andover v. ABA*, 107 F.3d 1026, 1042 (3d Cir. 1997); see also *Nehemiah v. The Athletics Congress*, 765 F.2d 42, 48 (3d Cir. 1985). A court may "refuse such requests when they are untimely, unsupported, or irrelevant to the jurisdictional debate." *Renner v. Lanard Toys Ltd.*, 33 F.3d 277, 283-84 (3d Cir. 1994) (finding that an opposition brief's mention of discovery was sufficient even though plaintiff made no formal motion); *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30, 45-46 (1st Cir. 1999). If a plaintiff presents factual allegations that suggest "with

reasonable particularity" the possible existence of the requisite "contacts between [the party] and the forum state," *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992), the plaintiff's right to conduct jurisdictional discovery should be sustained. *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003).

In its response to Shell's motion to dismiss for lack of personal jurisdiction, Club St. Croix sought to meet its burden of showing that Shell was subject to personal jurisdiction in this Court by arguing that three prongs of the Virgin Islands long-arm statute reached Shell.<sup>2</sup> In determining that Club St.

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<sup>2</sup> The Virgin Islands long-arm statute provides:

- (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person[ ]
  - (1) transacting any business in this territory;
  - (2) contracting to supply services or things in this territory;
  - (3) causing tortious injury by an act or omission in this territory;
  - (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
  - (5) having an interest in, using, or possessing real property in this territory; or
  - (6) contracting to insure any person, property, or risk located within this territory at the time of contracting.
  - (7) causing a woman to conceive a child, or conceiving or giving birth to a child; or

Croix had failed to meet its burden, the Court found that Club St. Croix had provided "only scant evidence of Shell's course of conduct in the Virgin Islands." *Club St. Croix Homeowners Ass'n v. Shell Oil Co.*, Civ. No. 2003-181, 2007 U.S. Dist. LEXIS 90752, at \*10 (D.V.I. Nov. 30, 2007). The Court further reasoned that Club St. Croix's other "evidence falls far short of establishing that a 'sufficient nexus' exists between the Virgin Islands and Shell." *Id.* at \*12. Finally, the Court concluded that Club St. Croix attempted to "bolster [its] already lacking argument by arguing in general terms that Shell marketed and sold PB for use in plumbing systems, some of which were installed in the Virgin Islands." *Id.* at \*14.

In the exercise of its discretion whether to allow jurisdictional discovery, the Court did not find that such discovery was warranted based on Club St. Croix's bare-bones jurisdictional allegations. *See, e.g., Sathianathan v. Pacific Exchange, Inc.*, No. 06-3783, 2007 U.S. App. LEXIS 22084, at \*4-5 (3d Cir. Sept. 14, 2007) ("We agree with the District Court that

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- (8) abandoning a minor in this Territory.  
(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

V.I. CODE ANN. tit. 5, § 4903. Club St. Croix specifically contended that subsections (1), (2) and (4) of the long-arm statute applied to Shell.

the plaintiff did not allege facts sufficient to establish personal jurisdiction over the individual defendants in this case. . . . As plaintiff failed to make even a threshold showing of jurisdiction, he was not entitled to the jurisdictional discovery he claims to have been denied." ). In other words, the Court did not find that Club St. Croix's generalized allegations of Shell's contacts with the Virgin Islands contained in the complaint and other pleadings were sufficiently particular to make out a prima facie case that could justify jurisdictional discovery. See, e.g., *Parker v. Learn the Skills Corp.*, 219 Fed. Appx. 187, 190 (3d Cir. 2007) (holding that "the generalized allegations of defendants' contact with Pennsylvania . . . are . . . [in]sufficient to make out a prima facie case that could justify jurisdictional discovery"); *Massachusetts School of Law at Andover*, 107 F.3d at 1042 ("MSL legitimately cannot allege a nationwide conspiracy and then say, without more evidence, that such a conspiracy must have effects in Pennsylvania."); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66-67 (3d Cir. 1984); cf. *Sunview Condo. Ass'n v. Flexel Int'l*, 116 F.3d 962, 964 (1st Cir. 1997) ("[A] diligent plaintiff who sues an out-of-state corporation and who makes out a colorable case for the existence of *in personam* jurisdiction may well be entitled to a modicum of jurisdictional discovery if the corporation interposes a jurisdictional defense."). The Court

sees no reason to disturb that finding.<sup>3</sup>

Furthermore, the Court notes that Club St. Croix commenced this action in November, 2003. Shell filed its motion to dismiss in January, 2004. After requesting and being granted two extensions of time within which to file an opposition to that motion, Club St. Croix filed such an opposition in March, 2004. At no point in this litigation did Club St. Croix file a motion for jurisdictional discovery. Indeed, the record reflects that the only indication of Club St. Croix's wish to conduct such discovery was its mere suggestion -- in the last sentence of the conclusion of its twenty-one-page opposition to Shell's motion -- that, in the alternative, "the Court should permit jurisdictional discovery to go forward." (Pl.'s Resp. to Def.'s Mot. to Dismiss for Lack of Personal Jurisdiction 20-21.) The Court did not rule on Shell's motion until December, 2007. Despite the nearly three-year pendency of that motion and evidence of some other discovery-related activity, the record does not reflect that Club

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<sup>3</sup> Indeed, Club St. Croix's only "reasonably particular" showing of Shell's contacts with the Virgin Islands was its proffer of labels on motor oil containers. Those labels indicated that the motor oil was distributed by an entity called Shell Oil Products US. As the Court noted in its earlier decision, however, Club St. Croix's reliance on those labels was misplaced because "the long-arm statute requires that when jurisdiction is based on one of its provisions, the claim must arise from the conduct alleged in the complaint. Here, the gravamen of the Complaint springs from Shell's manufacture and sale of PB, not motor oil." *Club St. Croix Homeowners Ass'n*, 2007 U.S. Dist. LEXIS 90752, at \*14-15 (internal citations omitted).



St. Croix made any effort to convince the Court of the need for jurisdictional discovery. Club St. Croix's lack of diligence in this matter provides further support for the Court's conclusion that reconsideration of its December 4, 2007, ruling is unwarranted. *See, e.g., Cent. States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 (7th Cir. 2000) ("[T]he decision of whether or not to permit jurisdictional discovery is a matter committed to the sound discretion of the district court."), *cited with approval in Base Metal Trading Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 47 Fed. Appx. 73, 77 (3d Cir. 2002); *see also United States v. Offshore Marine*, 179 F.R.D. 156, 160 (D.V.I. 1998) ("The Court has considered the request [for jurisdictional discovery] of the [the plaintiff] in light of the length of time plaintiff has had to establish a prima facie case of personal jurisdiction over [the defendant]. The [plaintiff] has had ample time to do so and its request for additional discovery is denied.").

Club St. Croix has failed to meet its burden for reconsideration because the arguments it now raises fail to identify any intervening change in the law, new evidence, or clear error. *See, e.g., Nicholas v. Wyndham Int'l, Inc.*, Civ. No. 2001-147, 2007 U.S. Dist. LEXIS 90809, at \*11-12 (D.V.I. Nov. 20, 2007); *Devcon Int'l Corp. v. Reliance Ins. Co.*, Civ. No. 2001-201, 2007 U.S. Dist. LEXIS 84283, at \*9-10 (D.V.I. Nov. 9,

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For the reasons stated above, it is hereby

**ORDERED** that the motion is **DENIED**.

**Dated: February 9, 2008**

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**CURTIS V. GÓMEZ**  
**Chief Judge**

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